

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

KYLE SANFORD

Respondent

v.

CENTURYTEL OF MISSOURI LLC

Appellant

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DOCKET NUMBER WD77848

DATE: October 28, 2015

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Appeal From:

Circuit Court of Boone County, MO  
The Honorable Christine Carpenter, Judge

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Appellate Judges:

Division Two  
Thomas H. Newton, P.J., Victor C. Howard, and Mark D. Pfeiffer, JJ.

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Attorneys:

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| Mark Leadlove, St. Louis, MO  | Counsel for Appellant    |
| Jonathan Potts, St. Louis, MO | Co-Counsel for Appellant |
| Stephen Clark, St. Louis, MO  | Co-Counsel for Appellant |

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Attorneys:

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|---------------------------------------|---------------------------|
| Kenneth McClain, II, Independence, MO | Counsel for Respondent    |
| Jonathan Soper, Independence, MO      | Co-Counsel for Respondent |

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

KYLE SANFORD, Respondent, v.  
CENTURYTEL OF MISSOURI LLC, Appellant

**WD77848**

**Boone County**

Before Division Two Judges: Newton, P.J., Howard, and Pfeiffer, JJ.

Sanford filed a lawsuit on behalf of a statewide class of consumers to challenge a surcharge that Internet-service provider CenturyTel of Missouri (CenturyLink) imposed on its customers. CenturyLink asked the court for an order that would require the dispute to be decided by an arbitrator rather than the court (a motion to compel arbitration). The company claimed that its contract with Sanford limited consumer complaints to an individual lawsuit filed in small claims court or before an arbitrator. The court denied the motion and ordered the parties to exchange information (conduct discovery) about whether Sanford's complaint came within the contract's arbitration clause.

Thereafter, Sanford asked the court to rule that his lawsuit was not subject to the arbitration clause (by filing a motion for partial summary judgment) and thus to deny the company's motion to compel arbitration. The court then entered on the docket an order granting Sanford's partial summary judgment motion. It was dated July 10, 2014. CenturyLink filed an appeal of that order to this Court on August 18, 2014. We initially dismissed the appeal because the case lacked a final appealable judgment, but then granted CenturyLink's request for rehearing and reinstated its appeal. Sanford has asked us to dismiss the appeal, claiming that CenturyLink's notice of appeal from an order denying its motion to compel arbitration was not filed within the time limits prescribed by our procedural rules and prior case law.

**DISMISSED.**

**Division Two Holds:**

In its first point on appeal, CenturyLink argues that its appeal of the order denying its motion to compel arbitration was timely because it was filed within the prescribed ten-day period following the thirty-day period that must pass before a judgment or order becomes final and appealable (the "30+10" timeframe). We disagree.

Whether an appeal is filed in time determines whether we have the authority to decide the other issues, or the merits, of an appeal. Section 435.440.1 RSMo (2000) permits an appeal to "be taken from: An order denying an application to compel arbitration." Our courts have consistently characterized an order denying a motion to compel arbitration as a final, appealable order, thus we question whether Rule 81.05(a), which states that a judgment becomes final at the expiration of thirty days after its entry, applies to a trial court order denying a motion to compel arbitration. In many respects, an order denying a motion to compel arbitration is much like other interlocutory (or non-final) orders that are declared by law to be final for purposes of appeal and must be appealed within ten days of entry.

In addition, the Southern District in 2008 held that a notice of appeal must be filed within ten days of the docket entry of such an order. *Hershewe v. Alexander*, 264 S.W.3d 717,718 (Mo. App. S.D. 2008). After briefing concluded in *Sanford*, the Eastern District held, to the contrary, that an appeal from the denial of a motion to compel arbitration filed within the “30+10” timeframe is timely. *Motormax Fin. Servs. Corp. v. Knight*, No. ED102257, 2015 WL 4911825 (Mo. App. E.D. Aug. 18, 2015). We find *Hershewe* to be the more compelling of the two cases, and, because it was the controlling authority when CenturyLink filed its appeal, the trial court’s order denying the company’s motion to compel was final when entered on the docket. CenturyLink had ten days to take its appeal from that order. Because it did not do so, its appeal, filed more than ten days after it was entered, was not timely.

Therefore, we dismiss the appeal and send it back to the trial court for further proceedings.

Opinion by Thomas H. Newton, Presiding Judge

October 28, 2015

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